IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 20164 of 2007(A)

PETITIONER:

C.R.CHANDRAN, AGED 52 YEARS, S/O.RAMAN,
CHAKKELATHU HOUSE, LAKSHAM VEEDU COLONY,
MYLAPARA P.O., PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF HOME,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM.

3. CIRCLE INSPECTOR OF POLICE,
PATHANAMTHITTA.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.20164/2007

PETITIONER'S EXHIBITS:

EXT.P1:- A COPY OF THE FIR IN CRIME NO.107/2007 OF PATHANAMTHITTA POLICE STATION.

EXT.P2:- COPY OF THE REPORT DATED 18/2/2007 BY THE THIRD RESPONDENT.

EXT.P3:- COPY OF THE NOTICE DATED 21/3/2007 ISSUED J.F.M.C., PATHANAMTHITTA.

EXT.P4:- COPY OF THE REPRESENTATION DATED 26/3/2007 BY PETITIONER TO THE STATE HUMAN RIGHTS COMMISSION.

EXT.P5:- A COPY OF THE APPLICATION DATED 26/3/2007 FOR CANCELLATION OF BAIL OF THE FIRST ACCUSED.

EXT.P6:- A COPY OF THE REPORT DATED 13/3/2007 FOR CANCELLATION OF BAIL OF THE FIRST ACCUSED.

EXT.P7:- COPY OF THE REPORT DATED 2/4/2007 BY THE THIRD RESPONDENT.

EXT.P8:- COPY OF THE ORDER DATED 24/4/2007 PASSED BY THE SESSIONS COURT, PATHANAMTHITTA.

EXT.P9:- COPY OF THE REPRESENTATION SUBMITTED BY PETITIONER TO THE 2ND RESPONDENT DT.13/6/2007.

[TRUE COPY]

R.BASANT, J.

W.P.C.No.20164 of 2007

Dated this the 24th day of July 2007

J U D G M E N T

This petition under Article 226 of the Constitution is filed by the petitioner to assail Ext.P7 report filed by the investigating officer in crime No.107/07 under Sections 302 and 324 read with 34 I.P.C. By the said report, the investigating officer had reported to the court that the second accused shown in the F.I.R is the petitioner. Request was made to incorporate his name as the second accused.

2. During the pendency of this proceedings, it is reported that the final report has already been filed arraying the petitioner as the second accused in the crime. The final report has already been submitted before the learned Magistrate.

3. While the learned counsel for the petitioner submits that there is no acceptable and tangible materials against the petitioner to justify his being arrayed as an accused, the learned Public Prosecutor who has placed the case diary before the court argues that there are materials which justify the arraying of the

petitioner as the second accused and also the filing of the chargesheet against the petitioner. It is not necessary for me to advert to the acceptability of such materials at this stage of the proceedings under Section 482 Cr.P.C. Suffice it to say that I have gone through the case diary as also the final report and I find the prosecution has made specific allegation that the overt acts allegedly committed by the petitioner had been witnessed by two persons who have identified the petitioner also.

4. Be that as it may, the learned counsel for the petitioner after advancing detailed arguments in this writ petition finally makes only one request. He submits that the petitioner may be permitted to surrender before the learned Magistrate and there may be directions issued under Section 438 Cr.P.C in favour of the petitioner which will ensure that the petitioner is not subjected to unnecessary and undeserved trauma of detention in custody for any length of time.

5. The learned Public Prosecutor submits that the investigation having been completed, the prosecution has no objection against grant of bail to the petitioner by the learned Magistrate but prays that opportunity may be given to the

investigating officer to question the petitioner and cross-check the details. I am satisfied that directions under Section 438 Cr.P.C can be issued in favour of the petitioner safeguarding the interest of the prosecution.

6. In the result, this petition is allowed in part and to the limited extent and the following directions being issued in favour of the petitioner:

i) The petitioner shall surrender before the learned Magistrate before whom the committal proceedings are registered on 1/8/2007.

ii) He shall be released on bail on his executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 5 p.m on 02/08/2007 and 03/08/2007. During this period, the investigating officer should be entitled to interrogate the petitioner in custody.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(v) If he were arrested prior to 01/08/2007, he shall be released from custody on his executing a bond for Rs.50,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 01/08/2007.

7. It is made clear that the fact that the other prayers made by the petitioner has not been granted in this petition will not in any way fetter the rights of the petitioner to raise appropriate contentions before the learned Magistrate and in the trial ultimately.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007